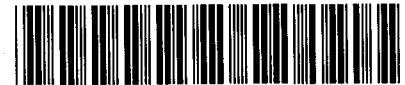


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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

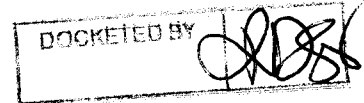
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OCT 6 2011

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL



IN THE MATTER OF THE APPLICATION
OF DII-EMERALD SPRINGS, L.L.C. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
SERVICES.

DOCKET NO. WS-20794A-11-0140

IN THE MATTER OF THE APPLICATION
OF DII-EMERALD SPRINGS, L.L.C. FOR
APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

PROCEDURAL ORDER

BY THE COMMISSION:

On April 4, 2011, in Docket No. WS-20794A-11-0140 ("CC&N Docket"), DII-Emerald Springs, L.L.C. ("DII") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in a service area adjacent to the Colorado River in Ehrenberg, approximately 45 miles south of Parker, in La Paz County, Arizona. The service area encompasses the 54-lot Emerald Springs Subdivision ("Emerald Springs"), to which DII states it has been providing wastewater service since 2004. DII explained that it established a packaged plant on an emergency basis in 2004, with permission from the Arizona Department of Environmental Quality ("ADEQ"), but that the situation has become permanent. DII stated that it has been operating at a loss and that it desires for the Commission to establish rates that will at least cover operating costs. DII stated that it applied for an Aquifer Protection Permit ("APP") for its wastewater treatment plan ("WWTP") in May 2004 and was granted an APP by ADEQ in June 2010.

On May 2, 2011, in the CC&N Docket, the Commission's Utilities Division ("Staff") issued a Notice to Docket Regarding Sufficiency, explaining that DII and Staff had worked together to evaluate DII's unique situation and had agreed that the established 30-day timeline for Staff to determine the sufficiency of DII's CC&N application should be waived to allow for the concurrent processing of a rate case.

1 On May 11, 2011, in the CC&N Docket, a letter from the Emerald Springs Homeowners
2 Association ("HOA") was docketed, with which the HOA included electronic copies of documents
3 purporting to be (1) a February 2011 letter from the HOA's attorney to Henry Melendez, President of
4 DII, regarding a dispute as to rates and billing; (2) a January 2011 e-mail from Mr. Melendez to the
5 HOA asserting that DII had applied to the Commission for adjudication that DII is not a public
6 service corporation and directing the HOA Board that rate and service complaints are to be handled
7 by the HOA Board rather than specific members, that the Board may contact Staff with questions
8 about or objections to DII's application, that HOA members should be required to deal only with the
9 HOA Board and should not contact the Commission, and that only HOA Board members should
10 contact the Commission;¹ and (3) a July 2004 Agreement Regarding Sewer Services between
11 Dynamic Financial & Investment Services, Inc., dba Dynamic Homes ("Dynamic"), and the HOA,
12 under which the HOA agreed, *inter alia*, to pay Dynamic a monthly sewer service fee of \$55.00 per
13 lot per month commencing upon connection to the sewer plant.

14 On June 13, 2011, in the CC&N Docket, two comments were filed by Emerald Springs
15 homeowners who expressed concern about a possible desire of the HOA to obtain service from Doyle
16 Thompson rather than DII.

17 On June 17, 2011, in the CC&N Docket, Staff filed a Staff Data Request, in which it included
18 a number of questions along with a statement that Staff was working with DII on other financial and
19 engineering data required for a rate investigation and would process the application in conjunction
20 with the financial and engineering information received.

21 On August 1, 2011, an amended legal description was filed in the CC&N Docket.

22 On August 24, 2011, Staff issued a Sufficiency Letter in the CC&N Docket, stating that the
23 application had met minimum sufficiency requirements as outlined in Arizona Administrative Code
24 ("A.A.C.") R14-2-602, that Staff would be issuing additional data requests in the near future, and that
25 the Commission has 150 days to complete its substantive review.

26 On July 15, 2011, in Docket No. WS-20794A-11-0279 ("Rate Docket"), DII filed a rate
27

28 ¹ The Commission will accept public comment regarding a public service corporation from any individual.

1 application, using a calendar year 2010 test year ("TY"). In its rate application, DII stated that it has
2 only one customer, the HOA; that its current monthly rate is \$3,041.18; and that DII had TY gross
3 revenues of \$32,164.00 and TY operating expenses of \$10,962.61, but that many expenses have been
4 subsidized or temporarily suspended. DII did not propose any specific rates or any level of revenue
5 increase. DII also stated that DII owns, operates, and is responsible for only the actual WWTP and
6 any process thereafter and that the HOA owns, operates, and maintains the entire collection system,
7 including the lift station and the pipes from the lift station to the WWTP.

8 On August 15, 2011, Staff issued a Letter of Sufficiency in the Rate Docket, stating that DII
9 has been classified as a Class E wastewater utility and that a Staff Report should be filed on or before
10 October 14, 2011.

11 On August 26, 2011, in the CC&N Docket, a Procedural Order was issued requiring DII and
12 Staff each to file, by September 6, 2011, a document stating its position on whether the CC&N
13 Docket and the Rate Docket should be consolidated and whether the HOA is a necessary party in
14 interest that should be joined in the CC&N Docket and/or the Rate Docket. The Procedural Order
15 further required that any responsive filing be made by September 12, 2011, and extended the deadline
16 for issuing an order in the CC&N Docket by 17 days.

17 On September 6, 2011, Staff filed a Response stating that Staff believes consolidation is
18 appropriate and that Staff does not believe that the HOA is a necessary party that must be joined.
19 Staff stated that if the HOA does not voluntarily intervene, Staff will be able to elicit answers to
20 Staff's questions through informal or formal communications with the HOA.

21 On September 6, 2011, DII also filed its Response, stating that DII supports consolidation of
22 the two dockets and that DII will support the decision of the Commission and Administrative Law
23 Judge regarding whether the HOA is a necessary party in interest that should be joined in either
24 docket or a consolidated docket.

25 On September 15, 2011, a Procedural Order was issued consolidating the CC&N Docket and
26 the Rate Docket; ordering that the time clock applicable to the consolidated docket is that from the
27 CC&N Docket; scheduling a hearing to commence on November 18, 2011; and establishing other
28 procedural requirements and deadlines, including a deadline for DII to provide the HOA members

1 notice of the hearing, and to have notice of the hearing published, by October 10, 2011.

2 On September 29, 2011, a telephonic procedural conference was held at the parties' request.
3 DII appeared through Henry Melendez, DII's President, and Staff appeared through counsel. Mr.
4 Melendez stated that he had not yet obtained the names and addresses of the individual HOA
5 members, that he believed the HOA would not provide him the names and addresses of the individual
6 HOA members, and that he thought the HOA should be required to send out the notices to the HOA
7 members. Mr. Melendez acknowledged that he had only spoken to one HOA representative—the
8 HOA Treasurer—regarding the names and addresses and also acknowledged that he had not yet done
9 anything to obtain publication of the required notice in a newspaper. Mr. Melendez was directed to
10 make further attempts to get the names and addresses from the HOA and, if that proved impossible,
11 to obtain the names and addresses through county property records. Mr. Melendez was directed to
12 make a filing by October 4, 2011, indicating whether he would be able to comply with the October
13 10, 2011, notice deadline. Mr. Melendez was advised that failure to indicate that DII would be able
14 to comply with the October 10, 2011, notice deadline would result in rescheduling of the hearing to a
15 later date.

16 DII has not yet made a filing regarding its ability to comply with the October 10, 2011, notice
17 deadline. Thus, it is necessary at this time to vacate the hearing currently scheduled for November
18 18, 2011, and to establish a later hearing date and corresponding procedural dates. It is also
19 necessary and appropriate to extend the Commission's time clock to issue a decision in this matter.
20 Finally, to ensure that DII is aware of the requirement, it is appropriate to point out that notice must
21 also be provided to any owners of land within the proposed service area who are not HOA members.

22 IT IS THEREFORE ORDERED that **the hearing scheduled for November 18, 2011, is**
23 **hereby vacated.**

24 IT IS FURTHER ORDERED that the **hearing** in this matter shall commence on **December**
25 **16, 2011, at 10:00 a.m.,** or as soon thereafter as is practicable, at the Commission's offices, Room
26 100, 1200 West Washington, Phoenix, Arizona 85007.

27 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
28 105, except that all motions to intervene must be filed on or before **November 28, 2011.**

1 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
 2 **December 8, 2011.**

3 IT IS FURTHER ORDERED that **DII shall, by November 7, 2011, mail** a copy of the
 4 following notice by first class U.S. Mail **to the HOA, the individual HOA members who receive**
 5 **service from DII's WWTP, and each owner of land** within the proposed service area **and cause**
 6 **the following notice to be published in a newspaper(s) of general circulation** in the proposed
 7 service area, in the following form and style:

8 **PUBLIC NOTICE OF HEARING ON THE**
 9 **APPLICATIONS OF DII-EMERALD SPRINGS, L.L.C. FOR A CERTIFICATE**
 10 **OF CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER**
 11 **SERVICE AND FOR APPROVAL OF RATES.**
 12 **(Docket Nos. WS-20794A-11-0140 et al.)**

13 **Summary**

14 On April 4, 2011, DII-Emerald Springs, L.L.C. ("DII") filed with the Arizona
 15 Corporation Commission ("Commission") an application for a Certificate of
 16 Convenience and Necessity ("CC&N") to provide wastewater service in a service area
 17 adjacent to the Colorado River in Ehrenberg, approximately 45 miles south of Parker,
 18 in La Paz County, Arizona. The service area encompasses the 54-lot Emerald Springs
 19 Subdivision ("Emerald Springs"), to which DII states it has been providing wastewater
 20 service since 2004. DII explained that it established a packaged plant on an
 21 emergency basis in 2004, with permission from the Arizona Department of
 22 Environmental Quality ("ADEQ"), but that the situation has become permanent. DII
 23 stated that it has been operating at a loss and that it desires for the Commission to
 24 establish rates that will at least cover operating costs.

25 On July 15, 2011, DII filed a rate application, using a calendar year 2010 test year
 26 ("TY"). In its rate application, DII stated that the Emerald Springs Homeowners
 27 Association ("HOA") is DII's only customer; that the HOA's currently monthly rate is
 28 \$3,041.18; and that DII had TY gross revenues of \$32,164.00 and TY operating
 expenses of \$10,962.61, but that many expenses have been subsidized or temporarily
 suspended. DII did not propose any specific rates or level of revenue increase. DII
 also stated that DII owns, operates, and is responsible for only the actual sewer
 treatment plant and any process thereafter and that the HOA owns, operates, and
 maintains the entire collection system, including the lift station and the pipes from the
 lift station to the sewer treatment plant.

DII's CC&N application and rate application have been consolidated into one matter
 for the Commission's consideration and decision. The Commission's Utilities
 Division ("Staff") has not yet made any recommendations regarding DII's
 applications. The Commission is not bound by the proposals made by DII, Staff, or
 any intervenors. The Commission will issue a decision regarding DII's applications
 following consideration of testimony and evidence provided at an evidentiary hearing.

How You Can View or Obtain a Copy of Each Application

Copies of the applications are available for inspection during regular business hours at
 the Commission's Docket Control Center in Phoenix, at 1200 West Washington Street,
 Phoenix, Arizona, and at DII's offices [COMPANY INSERT ADDRESS HERE].

The applications are also available on the Internet via the Commission's website (www.azcc.gov) using the e-Docket function.

Arizona Corporation Commission Public Hearing Information

The Commission will hold a hearing on this matter beginning **December 16, 2011, at 10:00 a.m.**, at the Commission's offices, Room 100, 1200 West Washington, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing a letter referencing Docket Nos. WS-20794A-11-0140 et al. to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to <http://www.azcc.gov/Divisions/Utilities/forms/PublicCommentForm.pdf>. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

About Intervention

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file a written motion to intervene with the Commission no later than **November 28, 2011**. You must send a copy of the motion to intervene to DII or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a potential customer of DII, property owner in the proposed service area, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to DII or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before November 28, 2011. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the record of the case.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov, voice phone number (602) 542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that **DII shall file certification of mailing and publication** as soon as practicable after the mailing and publication has been completed, but **no later than November 21, 2011**.

1 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
2 of same, notwithstanding the failure of an individual to read or receive the notice.

3 IT IS FURTHER ORDERED that Staff shall file its **Staff Report** and associated exhibits to
4 be presented at the hearing on or before **November 18, 2011**.

5 IT IS FURTHER ORDERED that any **objection or response to the Staff Report** from DII or
6 any intervenor shall be made in writing and filed on or before **December 5, 2011**.

7 IT IS FURTHER ORDERED that the **Commission's time clock** to issue a decision in this
8 matter is hereby **extended by 30 days**.

9 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
10 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
12 Communications) applies to this proceeding and shall remain in effect until the Commission's
13 Decision in this matter is final and non-appealable.

14 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
15 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
16 motion shall be deemed denied.

17 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
18 shall be filed within five calendar days of the filing date of the motion.

19 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
20 calendar days of the filing date of the response to the motion.

21 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
22 pursuant to Civil Procedure Rule 6(a) or (e).

23 ...

24 ...

25 ...


26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 6th day of October, 2011.

5
6
7 
8 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 6th day of October, 2011, to:


11 Henry Melendez
12 DII-Emerald Springs, LLC
212 East Rowland Street, No. 423
Covina, CA 91723

13 Julie A. LaBenz
14 LAW OFFICE OF JOHN C. CHURCHILL
1300 Joshua Avenue, Suite B
Parker, AZ 85344
Attorney for Emerald Springs Homeowners Association

15 Janice Alward, Chief Counsel
16 Legal Division
ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
Phoenix, AZ 85007

18 Steven M. Olea, Director
19 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
20 Phoenix, AZ 85007

21 ARIZONA REPORTING SERVICE, INC.
22 2200 N. Central Ave., Suite 502
Phoenix, AZ 85004-1481

23
24 By: 
25 Debra Broyles
Secretary to Sarah N. Harpring
26
27
28